## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

# BETH ISRAEL MEDICAL CENTER Employer

and Case No. 02-RC-121992

COMMITTEE OF INTERNS AND RESIDENTS, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1957 Petitioner

#### ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE, CHAIRMAN

NANCY SCHIFFER, MEMBER

### MEMBER MISCIMARRA, dissenting:

I would grant review in the instant case because (i) the Regional Director found medical interns, residents, chief residents, and fellows were statutory employees based a factual analysis applying standards set forth in *Boston Medical Center*, 330 NLRB 152 (1999) (finding medical interns, residents and fellows to be statutory employees) and *St. Barnabas Hospital*, 355 NLRB No. 39 (2010) (finding hospital house staff to be statutory employees), as well as *Brown University*, 342 NLRB 483 (2004) (finding that graduate and teaching assistants had a "primarily educational" relationship and were not statutory employees); (ii) the Board has granted review and invited briefing on whether *Brown University* should be adhered to, modified, or overruled in *Northwestern University*, Case 13-RC-121359 (notice and invitation to file briefs dated May 12, 2014) (Regional Director finding university grant-in-aid scholarship football players to be statutory employees); and (iii) the foregoing cases engage in different factual analysis and apply different standards regarding statutory employee status.

The Employer has not asked us to revisit or overrule *Boston Medical Center Corp.*, 330 NLRB 152 (1999), but argues that the present case is distinguishable from that case and *St. Barnabas*, above, due to changes in accreditation requirements set by the Accreditation Council for Graduate Medical Education. Although the Employer has identified certain factual differences between this case and both *Boston Medical Center* and *St. Barnabas Hospital*, these differences do not significantly implicate the considerations analyzed by and relied upon by the Board in those cases

We find the Employer's reliance on *Brown University*, 342 NLRB 483 (2004), misplaced. For the reasons stated in *St. Barnabas Hospital*, 355 NLRB 233 (2010), *Brown* is not controlling here.

### PHILIP A. MISCIMARRA, MEMBER

Dated, Washington, D.C., June 11, 2014.